

## 37 Am. Jur. 2d Fraud and Deceit § 162

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### Fraud and Deceit

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### IV. False Representations

#### G. Representations and Statements as to Particular Matters

##### 2. Title, Location, Quantity, and Quality of Property

##### c. Quantity; Acreage

## § 162. Area of real estate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  [27](#), [28](#)

### A.L.R. Library

[Tort liability for damages for misrepresentations as to area of real property sold or exchanged, 54 A.L.R.2d 660](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 161, 162](#) (Complaint, petition, or declaration—For damages—Misrepresentation as to acreage and boundaries of real property)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 165](#) (Complaint, petition, or declaration—Misrepresentations as amount of land in tract and flow of water on tract)

The general principle is widely recognized that a misrepresentation by the vendor of land as to the quantity of the land may be the basis of a charge of fraud where the vendor is in a position to know or form a reasonably accurate estimate of the actual quantity

and the vendee is not as favorably situated as the vendor and relies upon the misrepresentation.<sup>1</sup> False statements made by vendors as to the area of the land that was the subject of a sale are frequently regarded by the courts as having been intended to be accepted by the vendee as statements of fact of which the vendor has knowledge, and not expressions of opinion, and therefore to constitute fraud or deceit and to render the vendor liable in tort for the resulting damages to the vendee.<sup>2</sup> However, where a mere estimate of the quantity is given, a charge of fraud has been held not maintainable, unless the representor intended to deceive the representee.<sup>3</sup> Moreover, mere expressions of opinion by the representor as to the area of land or the number of acres that the tract contains cannot be made the basis of a charge of fraud,<sup>4</sup> at least where the opinion is honestly entertained and there is no fraudulent intent.<sup>5</sup> Also, in some jurisdictions, in the sale of real estate, the principle of caveat emptor applies to conditions open to observation and inspection, such as the location of lot lines and the amount of acreage in a lot that was part of a recorded plat on public file, and a casual verbal representation regarding a lot line and acreage do not constitute actionable fraud.<sup>6</sup>

Purchasers state a cause of action for fraud in connection with the purchase of a condominium unit when they allege that the defendant made a material misrepresentation about the floor dimensions of a purchased unit, purposefully inducing the purchasers to rely on it, and that the purchasers bought and prepared to move into the unit.<sup>7</sup>

A vendor's use of the expression "more or less," "approximately," "about," or some similar term in stating the area of the property conveyed does not prevent the vendor's being liable in fraud unless the variance between the actual area and that claimed is only slight.<sup>8</sup> The mere fact that the deficiency is very large is some evidence of fraud.<sup>9</sup>

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#### Footnotes

- 1 [Owen v. Schwartz](#), 177 F.2d 641, 14 A.L.R.2d 1337 (D.C. Cir. 1949); [Fisher v. Zimmer](#), 286 A.D. 1129, 146 N.Y.S.2d 170 (3d Dep't 1955), judgment aff'd, 1 N.Y.2d 721, 151 N.Y.S.2d 932, 134 N.E.2d 681 (1956).  
That the real property in question was of unusual size or irregular shape has been noted in a number of cases in which the vendor of such property was held liable for misrepresentation as to its area, which might be deemed to indicate that such size or shape was a factor in the court's determination. [Loehr v. Manning](#), 44 Wash. 2d 908, 272 P.2d 133 (1954).
- 2 [Clark v. Haggard](#), 141 Conn. 668, 109 A.2d 358, 54 A.L.R.2d 655 (1954); [Basnett v. Besett](#), 371 So. 2d 705 (Fla. 2d DCA 1979), decision approved, 389 So. 2d 995 (Fla. 1980).
- 3 [Boddy v. Henry](#), 113 Iowa 462, 85 N.W. 771 (1901).
- 4 [Fillegar v. Walker](#), 54 Ohio App. 262, 7 Ohio Op. 416, 23 Ohio L. Abs. 20, 6 N.E.2d 1010 (1st Dist. Hamilton County 1936).
- 5 [Lawson v. Floyd](#), 124 U.S. 108, 8 S. Ct. 409, 31 L. Ed. 347 (1888); [Graber v. Mayem](#), 426 F.2d 789 (9th Cir. 1970); [Stinson v. Adams](#), 376 So. 2d 1108 (Ala. Civ. App. 1979); [Fillegar v. Walker](#), 54 Ohio App. 262, 7 Ohio Op. 416, 23 Ohio L. Abs. 20, 6 N.E.2d 1010 (1st Dist. Hamilton County 1936).  
As to opinions as basis for action for misrepresentation, generally, see § 65.
- 6 [Florek v. Thomas](#), 12 Ohio Op. 3d 70 (Mun. Ct. 1979).
- 7 [Bhandari v. Ismael Leyva Architects, P.C.](#), 84 A.D.3d 607, 923 N.Y.S.2d 484 (1st Dep't 2011).
- 8 [Brodsky v. Hull](#), 196 Md. 509, 77 A.2d 156 (1950); [Jeffreys v. Weekly](#), 81 Or. 140, 158 P. 522 (1916); [Weinstein v. Sprecher](#), 2 Wash. App. 325, 467 P.2d 890 (Div. 1 1970).
- 9 [Boddy v. Henry](#), 113 Iowa 462, 85 N.W. 771 (1901); [Jeffreys v. Weekly](#), 81 Or. 140, 158 P. 522 (1916).

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